

REMARKS

In response to the Office Action mailed May 5, 2010, Applicants elect, without traverse, Group I, claims 1-10, drawn to a method for handling microparticles. In addition, Applicants elect, without traverse, microparticles as a species of particle, for purposes of initial examination only. Applicants submit that claims 1-10 read on the elected invention.

Claims 1-10 have been amended to clarify particular aspects of the present invention. Claims 11-21 have been cancelled and no new claims have been added. It is urged that support for all the claim amendments may be found throughout the as-filed specification and original claims, for example, on page 12, lines 25-26. No new matter has been added. The above amendments are not to be construed as acquiescence with regard to the Examiner's rejections and are made solely to clarify particular aspects of the presently claimed invention, without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Following the amendments, claims 1-10 are pending and under examination. Favorable reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks.

SHORTENED STATUTORY PERIOD FOR REPLY

Applicants' representative contacted Examiner Gordon on June 29, 2010, to discuss the nature of the instant Action. Applicants' representative noted to Examiner Gordon that the instant Action issues a restriction requirement and sets a 30 day shortened statutory period for reply, but in addition, the Action contains a substantive rejection of the claims under 35 U.S.C. § 112, second paragraph (*e.g.*, an action on the merits).

Applicants' representative further noted that § 809.02(a) of the M.P.E.P. states, "In those applications wherein a requirement for restriction is accompanied by an action on *>the elected< claims, such action will be considered to be an action on the merits and the next action *>may< be made final >where appropriate in accordance with MPEP § 706.07(a)."

In addition, Applicants' representative noted that § 710.02(b)(A) of the M.P.E.P. states that a 30 day shortened statutory period for reply is appropriate for a "[r]equirement for restriction or election of species only (no action on the merits) ... MPEP § 809.02(a) and § 817."

Applicants' representative requested that Examiner Gordon clarify whether the Action was a restriction requirement or a non-final Office Action because the rejection under 35 U.S.C. § 112, second paragraph is substantive rejection of the claims. Examiner Gordon stated that the Action was a restriction requirement; that the rejection of the claims under 35 U.S.C. § 112, second paragraph, was provided as a courtesy; and that Applicants could choose to ignore the rejection under 35 U.S.C. § 112, second paragraph, and respond only to the requirement for restriction.

Unfortunately, Applicants cannot comply with this suggestion as the M.P.E.P. and 37 C.F.R. clearly state that the reply to an Action must be fully responsive.

§ 714.02 Must Be Fully Responsive

§ 1.111 Reply by applicant or patent owner to a non-final Office action.
(a) (1) If the Office action after the first examination (§ 1.104) is adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply and request reconsideration or further examination, with or without amendment. See §§ 1.135 and 1.136 for time for reply to avoid abandonment.

Accordingly, as the instant Action is not merely a requirement for restriction but instead, an Action on the merits, it is not proper to issue a 30 day shortened statutory period for reply. Thus, Applicants respectfully request that the Examiner extend the shortened statutory period of reply to three months.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH, INDEFINITENESS

Claims 1-21 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Action alleges that the claims are generally narrative and indefinite and fail to conform to current U.S. practice. The Action further alleges

that the claims appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Applicants kindly thank the Examiner for noting the alleged grammatical and idiomatic errors in the claims.

Applicants have amended that claims to conform to U.S. practice; thus, obviating this basis for rejection. Applicants submit that no new matter was added by way of the claim amendments and that the amendments were solely made to clarify particular aspects of the presently claimed invention.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

/Michael J. McDonald/
Michael J. McDonald, Ph.D.
Registration No. 62,581

MJM:lhk

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104
Phone: (206) 622-4900
Fax: (206) 682-6031

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